

FILED  
Clerk  
District Court

JAN 25 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

MARK B. HANSON, ESQ.  
First Floor, Macaranas Building  
Beach Road, Garapan  
PMB 738 P.O. Box 10,000  
Saipan, Mariana Islands 96950  
Telephone: (670) 233-8600  
Facsimile: (670) 233-5262

Limited Appearance for World Corp.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

YU SUK CHUNG,

Plaintiff,

vs.

WORLD CORPORATION,

Defendant.

CASE NO. CV 04-00001

MOTION FOR  
RECONSIDERATION

Date FEB 09 2006

Time: 9:00 AM

Judge: Hon. Alex R. Munson

World Corporation ("WORLD"), by and through the undersigned attorney appearing specially in this matter for the limited purpose of this motion, hereby moves the Court to reconsider its January 19, 2006 Order Granting Motion to Withdraw as Counsel allowing attorneys David J. Lujan, Ignacio C. Aguigui, the law firm of Lujan Aguigui & Perez LLP, and Matthew T. Gregory, Esq. to end their representation of WORLD in the above-captioned proceedings.<sup>1</sup>

For the reasons stated in the following memorandum, supported by the Declaration submitted herewith, reconsideration is warranted and the Court should rescind its order allowing the withdrawal of WORLD's counsel and deny leave for said counsel to withdraw from the case unless and until WORLD's interests in this litigation are adequately addressed and protected. Said counsels' obligations, both ethically and contractually, are ongoing and

<sup>1</sup> As noted by the Court in its most recent order, a corporation may not appear *pro se*. Accordingly, in order to have the Court reconsider its decision under the real facts of this case, it was necessary for Defendant WORLD to obtain the assistance of the undersigned in representing them for purposes of this motion only.

ORIGINAL

1 the Court's order was premised on less than all of the facts of the circumstances here.

2 FACTS

3 On January 7, 2004, Plaintiff filed the Complaint in this case. See Docket at 1.  
4 Thereafter, WORLD hired attorney Pedro Atalig, now deceased, to represent it in this matter.  
5 Attorney Matthew Gregory, a withdrawing attorney herein, was associated with Mr. Atalig at  
6 the time. After Mr. Atalig's death, Mr. Gregory, himself, entered into a fee agreement with  
7 WORLD dated January 1, 2005 to continue the representation he had begun through  
8 association with Mr. Atalig. A true and accurate copy of that fee agreement is attached as  
9 Exhibit "A" to the Declaration of B.K. Park.

10 In April 2005, at the suggestion of Mr. Gregory, WORLD entered into a separate fee  
11 agreement with the law firm of Lujan, Unpingco, Aguigui & Perez LLP (the "Firm") to  
12 represent WORLD as additional counsel in this matter. A true and correct copy of "The Lujan  
13 Fee Agreement" is attached as Exhibit "B" to the Declaration of B.K. Park. The Lujan Fee  
14 Agreement set forth a general hourly rate for attorney time billed on the matter, but most  
15 notably section 2.B. if the Lujan Fee Agreement caps total fees *including costs* at \$100,000.00.

16 The scope of the Lujan Fee Agreement is detailed in section 1 (in part):

17 Client hires Attorney to provide legal services to serve as co-counsel for  
18 World Corporation in the case *Yu Suk Chung v. World Corporation*, Civil  
19 Action No. 04-00001, U.S. District Court for the Northern Mariana Islands. .  
20 . Attorney shall not be bound to pursue any appeals, but Attorney may opt,  
with Client's consent, to continue representation of Client in any appeal upon  
terms mutually agreed upon by Attorney and Client.

21 On April 5, 2005, WORLD paid the Firm \$20,000.00. On June 23, 2005, WORLD  
22 paid the Firm an additional \$39,466.79. On July 19, 2005, WORLD paid the Firm \$40,044.75  
23 for a total of \$99,511.54. Thereafter, in the middle of the trial in this matter and  
24 notwithstanding the fee and expense cap in the Lujan Fee Agreement, the Firm demanded,  
25 and WORLD was forced to pay, an additional \$40,000.00. To date, in addition to the fees  
26 paid by WORLD to its other attorneys for this case, WORLD has paid the Firm a total of  
27 \$139,511.54.  
28

1 The Lujan Fee Agreement allows the Firm to withdraw with WORLD's consent or  
2 without WORLD's consent for good cause.

3 On December 8, 2005, the Court filed a Notice of Order for Mistrial as to Plaintiff's  
4 Fraudulent Misrepresentation Claim after the jury returned a verdict as to the breach of  
5 contract claim, but *failed* to return any verdict on the fraudulent misrepresentation claim.

6 On about January 17, 2006, the Firm and Matthew Gregory filed a "Notice to  
7 Withdraw and Emergency Motion for an Order Discharging Counsel and Staying  
8 Proceedings."

9 After receiving a copy of the Firm's notice and motion filed with the Court on January  
10 17, 2006, WORLD sent the Firm a letter objecting, again, to the Firm's withdrawal and asking,  
11 among other things, that the Firm supplement their notice and motion with a copy of the  
12 Lujan Fee Agreement so that the Court would understand the Firm's continuing obligation  
13 under the Lujan Fee Agreement.

14 Instead of filing a copy of the Lujan Fee Agreement, Messrs Lujan and Aguigui filed  
15 declarations claiming that the Lujan Fee Agreement "ended in early December 2005, upon  
16 return of the verdict in this case . . ." without more. The matching declarations went on to  
17 state simply: "We are unable to continue our representation of World in this matter in the  
18 absence of an engagement agreement to govern such representation. Accordingly, we ask the  
19 Court to discharge us as counsel of record for World Corporation in this case as soon as  
20 possible."

21  
22 On the following day, January 19, 2006, the Court granted, without a hearing, all of  
23 WORLD's trial counsels' motions to withdraw<sup>2</sup> despite the following:

24 1. There appears to exist a pending motion filed by said counsel on behalf of WORLD  
25 to certify the partial judgment in this case and to stay a retrial of the fraud claims pending

---

26  
27 <sup>2</sup> It should be noted that, for whatever effect, all three of WORLD's counsel  
28 purportedly "noticed" their withdrawal and only moved for an order discharging them from  
further obligations in the District Court matter.

1 appeal on the breach of contract verdict. The motion is opposed by Plaintiffs and a reply by  
2 WORLD is due;

3 2. There appears to exist a pending motion filed by said counsel on behalf of WORLD  
4 for costs. The motion is opposed by Plaintiffs and a reply by WORLD is due;

5 3. There appears to exist a pending motion filed by the plaintiff to amend the  
6 judgment, a motion for attorneys fees, a motion for liquidated damages and a motion for  
7 sanctions;

8 4. All of the above-motions have been set for a hearing on February 16, 2006; and

9 5. The Court has scheduled the retrial of the fraud issues in this case to begin on April  
10 17, 2006.

11 The Court appears to have based its Order Granting Motion to Withdraw as Counsel,  
12 at least with regard to Messrs Lujan and Aguigui, on the proposition that they should be  
13 allowed to withdraw where WORLD "fails substantially to fulfill an obligation to the lawyer  
14 regarding the lawyer's services and has been given reasonable warning that the lawyer will  
15 withdraw unless the obligation is fulfilled. . . ." Order at 1-2 citing Mode Rule 1.16(b)(5). The  
16 Court, having never seen the Lujan Fee Agreement, also appears to have accepted the  
17 proposition that the Lujan Fee Agreement ended upon "the verdict in this case" and that  
18 WORLD "should have been aware that a new engagement agreement would be necessary to  
19 continue the representation after the return of the verdict."

20 Although the Court continued the due date for pending reply briefs to February 3,  
21 2006, the motions hearing date remains the same as do all other dates in the case. The Court  
22 went on to warn WORLD in its Order that a default may be entered against it if it cannot find  
23 new counsel.

24 WORLD respectfully submits that the grounds for the Firm's withdrawal, i.e., the  
25 withdrawal of Messrs Lujan and Aguigui do not exist and the Court, not having the benefit  
26 of a clear understanding of the nature of the Firm's continuing obligation to represent  
27 WORLD erred in granting Messrs Lujan's and Aguigui's motions to be discharged as attorneys  
28

1 for WORLD in this case.

## 2 STANDARD FOR RECONSIDERATION

3 A court's inherent power to reconsider its decisions is appropriate if the court: (1) is  
4 presented with newly discovered evidence; (2) committed clear error or the initial decision was  
5 manifestly unjust; or (3) if there is an intervening change in controlling law. *School Dist. No.*  
6 *1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993), *cert. denied*, 512 U.S. 1236 (1994). *See*  
7 *also Rosenfeld v. United States Dep't. Of Justice*, 57 F.3d 803 (9<sup>th</sup> Cir. 1995), *cert. dismissed*,  
8 516 U.S. 1103 (1996); *Barber v. Hawaii*, 42 F.3d 1185 (9<sup>th</sup> Cir. 1994); *United States v. RG&B*  
9 *Contractors, Inc.*, 21 F.3d 952 (9<sup>th</sup> Cir. 1994).

## 10 ARGUMENT

11 Had the Court been fully apprised of the facts of the issue here – the true nature of  
12 Messrs Lujan's and Aguigui's continuing obligation to represent WORLD – and in light of the  
13 material adverse effect the withdrawal of *all* of WORLD's counsel had and will continue to  
14 have if not rescinded, the Court should have come to a different conclusion, at the very least  
15 denying Lujan's and Aguigui's motion to withdraw unless and until new counsel for WORLD  
16 actually substitutes for those attorneys in this matter.

### 17 *Ethical-Legal Standards for Withdrawal.*

18 In the Commonwealth, the Model Rules of Professional Conduct, the RESTATEMENT  
19 OF THE LAW GOVERNING LAWYERS and the Local Rules of the Court govern an attorney's  
20 termination of representation of a client, including the withdrawal of that attorney from  
21 pending litigation in which the attorney represents the client.

22 "Ordinarily, a representation in a matter is completed when the agreed-upon assistance  
23 has been concluded." Rule 1.16, Comment [1] (citations to other rules omitted). "A lawyer  
24 may limit the scope of the representation if the limitation is reasonable and the client gives  
25 informed consent." Rule 1.2(c). "All agreements concerning a lawyer's representation of a  
26 client must accord with the Rules of Professional Conduct and other law." Rule 1.2,  
27 Comment [8] (citations omitted). "An agreement may not be made whose terms might  
28

1 induce the lawyer to improperly curtail services for the client or perform them in a way  
 2 contrary to the client's interest. . . Otherwise, the client might have to bargain for further  
 3 assistance in the midst of a proceeding or transaction." Rule 1.5, Comment [5].

4 Absent circumstances that do not exist in this case, a lawyer may withdraw from  
 5 representing a client if withdrawal can be accomplished without material adverse effect on the  
 6 interests of the client. See Model Rule 1.16(c). In any case, "[i]n the case of permissive  
 7 withdrawal [], a lawyer may not withdraw if the harm that withdrawal would cause significantly  
 8 exceeds the harm to the lawyer or others in not withdrawing." RESTATEMENT OF THE LAW  
 9 GOVERNING LAWYERS, § 32(4). See also Comment h(ii) thereto:

10 Whether material adverse effect results is a question of fact. The client  
 11 might have to expend time and expense searching for another lawyer. The  
 12 successor lawyer might have to be paid what in effect are duplicated fees for  
 13 becoming familiar with the matter. . . Delay necessitated by the change of  
 14 counsel might materially prejudice the clients' matter. An equally qualified  
 15 lawyer might be unavailable or available only at material inconvenience to the  
 16 client.

17 A lawyer must also comply with the applicable law requiring notice to or permission of  
 18 a tribunal when terminating a representation. Model Rule 1.16(c). See also RESTATEMENT OF  
 19 THE LAW GOVERNING LAWYERS, § 32(5).<sup>3</sup> And a lawyer has a duty of candor towards the  
 20 tribunal. See, e.g., Model Rule 3.3(d) ("In an ex parte proceeding, a lawyer shall inform the  
 21 tribunal of all material facts known to the lawyer that will enable the tribunal to make an  
 22 informed decision, whether or not the facts are adverse.").

23 Here, the terms of the Lujan Fee Agreement clearly capped the fees WORLD was  
 24 obligated to pay the Firm at \$100,000.00. WORLD, against its will, paid more than the  
 25 required amount. WORLD is not in breach of any obligation to the Firm. There has been no  
 26 verdict on the fraudulent misrepresentation charges and, accordingly, the case before this  
 27 Court in which the Firm agreed to represent WORLD is ongoing. Arguably, even if there was

---

28 <sup>3</sup> Local Rule 83.5.g.4 provides that: "An attorney may withdraw from a civil or criminal  
 case only after order of the court upon motion and for good cause shown, and after serving  
 notice upon his or her client and opposing counsel."

1 a full verdict here, the scope of the Lujan Fee Agreement covers post trial motions and any  
2 other proceedings short of an appeal without additional expense to WORLD.

3 There is simply no basis for the withdrawal of the Firm. The Firm's withdrawal, i.e.,  
4 the withdrawal of Messrs Lujan and Aguigui, under the present circumstances, in light of the  
5 pending motions and other proceedings and the fact that a retrial is quickly approaching, and  
6 the fact that WORLD has already paid for the representation, is not possible under the Model  
7 Rules of Professional Conduct, the RESTATEMENT OF THE LAW GOVERNING lawyers and basic  
8 principals of contract law.

9  
10 **CONCLUSION**

11 For the foregoing reasons, the Court should reconsider its decision granting WORLD's  
12 counsels' withdrawal and deny the motion unless and until WORLD's interests are adequately  
13 addressed and protected by substitution of available counsel with provision of adequate time  
14 for new counsel to come up to speed in the case, and other remedies that the Court may deem  
15 necessary and warranted to alleviate and ameliorate the hardship incurred by WORLD due to  
16 its' counsels' actions in this matter.

17 DATED this 25<sup>th</sup> day of January, 2006.

18  
19  
20  
21   
22 **MARK B. HANSON**

23 First Floor, Macaranas Building  
24 Beach Road, Garapan  
25 PMB 738, P.O. Box 10,000  
26 Saipan, MP 96950  
27 Telephone: (670) 233-8600  
28 Facsimile: (670) 233-5262

Limited Appearance for World Corp.

**RECEIVED**

JAN 25 2006

Clerk  
District Court  
For The Northern Mariana Islands